

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BRIAN O'KEITH JONES,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

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MEMORANDUM AND ORDER

Case No. 21-CV-350 (FB)

Appearances:

For the Plaintiff:

CHRISTOPHER JAMES BOWES
54 Cobblestone Drive
Shoreham, New York 11786

For the Defendants:

JOHANNY SANTANA
Office of the General Counsel
Social Security Administration
6401 Security Boulevard
Baltimore, Maryland 21235

BLOCK, Senior District Judge:

On February 23, 2024, the Court remanded this matter to the Commissioner of Social Security ("Commissioner") for further proceedings on the plaintiff's claim for benefits. The Court instructed that the proceedings on remand were to be completed within 60 days, with an additional 60 days for any administrative appeals to be completed. The plaintiff now asks the Court to clarify that failure to comply with those deadlines will result in an automatic award of benefits.

The Court's omission of a sanction for noncompliance was not an oversight. Although the Second Circuit has held that a district court has the discretion to

impose such a sanction, *see Butts v. Barnhart*, 388 F.3d 377, 387 (2d Cir. 2004), its holding is limited to cases at step five of the Commissioner’s familiar five-step claim evaluation process, that is, “cases where the claimant is entitled to benefits absent the Commissioner’s providing expert vocational testimony about the availability of appropriate jobs.” *Butts v. Barnhart*, 416 F.3d 101, 104 (2d Cir. 2005) (decision on rehearing). The plaintiff’s claim was denied at step four.

Thus, the deadlines imposed by the Court were intended to admonish the Commissioner for the delay in processing the claim and to urge him to act more expeditiously on remand. Plaintiff’s request for clarification is denied.¹

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
February 26, 2024

¹The Court has considered excising the deadlines from its memorandum and order but does not wish to punish the plaintiff for his counsel’s tactical error. Counsel, on the other hand, would be well advised to reread Aesop’s tale of the dog and its shadow.